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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़ कर) केन्द्रीय प्राधिकारियों द्वारा जारी किए गए आदेश और अधिवृत्ताएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

ELECTION COMMISSION OF INDIA NOTIFICATION

New Delhi, the 30th September, 1982

O.N. 130.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Bihar, Patna dated 30th August, 1982 in Election Petition No. 2 of 1978.

ELECTION PETITION NO. 2 OF 1978

In the matter of an application under section 81 of the Representation of People Act, 1951.

Shyam Lal Gupta	Petitioner
Versus	
Daya Nand Sahay	Respondent
For the Petitioner.—M/s. S. C. Ghosh, S. N. P. Sharma and A. K. Singh.	
For the Respondent.—M/s. Thakur Prasad and Ganga Prasad Roy.	

PRESENT

Shivansh Narain, J.—By this petition under section 81 of Representation of People Act, 1951 (hereinafter called the Act) the Petitioner Shyam Lal Gupta challenges the election of Respondent no. 1. Shri Daya Nand Sahay to the Council of States from the Bihar Legislative Assembly

held in March 1978 and prays that the election of respondent No. 1 be set aside and the petitioner be declared elected to the Council of States.

2. The petitioner, respondent no. 1 and the other twelve respondents and some other persons filed their nomination papers for the election of eight members to the Council of State from the Bihar Legislative Assembly Constituency on or before 15-3-1978, the last date fixed for filing nomination papers. The other persons withdrew their nominations and the petitioner and the thirteen respondents including respondent no. 1, were the contesting candidates at the election. Seven of the respondents including respondent no. 1 were declared elected and the petitioner, who was a sitting member of the Council of States, was defeated. The results were declared on 29-3-1978 and the present election petition was filed on 15-5-1978.

3. Though the election of the respondent no. 1 was originally impugned also on the ground of commission of corrupt practices, subsequently the learned Advocate for the petitioner stated that the plea that the election of respondent No. 1 was vitiated by commission of corrupt practices would not be pressed and, accordingly, issue no. 5 which related to the commission of corrupt practices by respondent no. 1 (hereinafter called the respondent), was, by order no. 59 dated 22-3-1982 of this Court deleted. The sole ground on which the election of respondent no. 1 is now challenged and which now survives for decision is that in view of the provisions of section 9A of the Act, the respondent was disqualified for election as, on the date of the election, he had a subsisting contract in the course of his trade or business with the Government of India for supply of goods to that Government.

4. The averments relating to the alleged disqualification of the respondent are contained in Paragraph no. 18 of the election petition. According to the averments, the respondent along with his brother, namely, Sri Viveka Nand Sahay and Sri Vidya Nand Sahay helped by some other relations was engaged in trade and business and in 1972, in the course of his trade and business, pursuant to Tender No. C. S. 18 of 1971 of the Railway Board, the respondent entered into a contract with the Department of Railways of the Central Government to supply 2,25,000 pieces of mono block concrete cement sleepers. The agreement containing the aforesaid contract was executed on 27-9-1972 "by and on behalf of the respondent no. 1 in the name of M/s. Daya Engineering Works (Pvt.) Ltd. of which respondent No. 1 was and the Chairman-cum-Managing Director and proprietor". The aforesaid contract, it is said, was subsisting on the date of the election.

5. The petition was contested by the respondent. The respondent in his written statement asserts that he had not entered into any contract with the Railway Department of the Central Government. The respondent specifically denies that he had entered into any contract in accordance with Tender No. C. S. 18 of 1971 of the Railway Board for supply of mono block concrete sleepers. The respondent further asserts that on the date of filing of the nomination paper or the election he was neither the Chairman, nor the Managing Director nor the Proprietor of M/s. Daya Engineering Works (Pvt.) Ltd. The respondent maintains that M/s. Daya Engineering Works (Pvt.) Ltd. was a company registered under the Indian Companies Act in 1963 with its own seal and independent identity and any agreement or contract between the said Company and the Government could not be a ground for his disqualification under section 9A of the Act of its share holders or Directors. The allegations of corrupt practices were denied. Certain technical pleas in defence were also raised but as they were not pressed it is not necessary to specify them.

6. The following issues were barring Issue no. 5 which was deleted framed :—

- (1) Is the Election Petition maintainable ?
- (2) Is the Election Petition fit to be dismissed because of non-compliance of Sections 81, 82, 83 and 117 of the R. P. Act, 1951 ?
- (3) Whether Respondent no. 1 had entered into contracts with the Government of India particularly with the department of Railway or with the authorities of the said department for the supply of cement sleepers ? If so, whether the said contract was subsisting on the relevant dates of impugned election ? If so, whether he is disqualified to be chosen under section 9A of the Representation of People Act, 1951 to fill the seat in the Rajya Sabha ?
- (4) Whether the nomination papers of the Respondent no. 1 was improperly accepted ?
- (5) Whether the election of respondent no. 1 is fit to be set aside and if so is the petitioner entitled to be declared as a duly elected member of the Rajya Sabha ?

Issue Nos. 1 and 2

7. Neither of these two issues were pressed on behalf of the petitioner. These two issues must, therefore, be answered against the respondent, Issue no. 1 in the affirmative, and Issue no. 2 in the negative.

Issue Nos. 3 and 4

8. The answer to issue no. 4 depends upon the answer to Issue no. 3. Therefore, both these issues are taken up together.

9. The main question for determination is if the respondent at the time of the election, was, in view of the provisions of Section 9A of the disqualified for being election

to the Rajya Sabha i.e. the Council of States. Section 9A of the Act, omitting the explanation which is not relevant for the purposes of this case, runs thus :—

"9A. Disqualification for Government contracts etc.—A person shall be disqualified if and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

The 'appropriate Government' in relation to disqualification for election to the Council of States means the Central Government—Section 7(a) of the Act. A person is, therefore, disqualified under the section for election as a member of the Council of States only if all the following conditions exist :—

- (a) A contract entered into by him with the Central Government;
- (b) The contract must be entered into in the course of trade or business of the person;
- (c) The contract must be for the supply of goods to, or for execution of any work undertaken by that Government; and
- (d) the aforesaid contract must subsist.

9. Though the issue, as framed, speaks of contracts entered into with the Government of India, according to the averments in the election petition as they stand, after the deletion of certain averments therein on the ground of vagueness, by order No. 32 dated 3-12-79, the only contract on which the disqualification under section 9A of the Act is founded is the contract which respondent no. 1 is alleged to have entered into with the Government of India in pursuance of Tender No. C. S. 18 of 1971 of the Railway Board. That contract has been brought on record and marked Exhibit 1. That contract is dated 27 September, 1972 and on the face of it, the parties to the contract are the President of India and M/s. Daya Engineering Works (Pvt.) Ltd., Gaya. The contract has been signed by the Joint Director, Civil Engineering, Railway Board for and on behalf of the President of India and by S. N. Gupta, Technical Director of M/s. Daya Engineering Works (Pvt.) Ltd. (hereinafter called 'the Company') for and on behalf of the Company. It is not necessary to set out the terms of the contract except to state that by this agreement the Company and the Government of India entered into a contract for the supply of 2.25 lacs pieces of Mono Block concrete sleepers by the Company to the Government of India at the price and on the terms and conditions mutually agreed upon. The contract, therefore, is clearly a contract with the Government of India for the supply of goods to that Government. It is not in dispute that this contract was subsisting at the time when respondent no. 1 filed his nomination paper or was declared elected to the seat in the Council of State. Thus, only further condition for the applicability of section 9A of the Act which must be satisfied is whether this was a contract entered into by the respondent no. 1, and if so, whether it was entered into by him in the course of his trade or business.

10. The petitioner asserts that it was a contract entered into by respondent in the course of his trade or business. The respondent demurs and asserts that the contract aforesaid was entered into in the course of its trade and business by the Company, which is an independent legal entity, separate and distinct from its share-holders and directors and the fact that at the time the contract was entered into by the Company, the respondent was its Managing Director could not make the contract entered into by the Company a contract entered into by the respondent. The Company is a company registered under the Indian Companies Act, 1956. It was incorporated on 19 March, 1963 and the certificate of its incorporation is Exhibit A. It cannot, therefore, be disputed that the company is a legal person and has a legal entry separate and distinct from that of its share-holders

or Directors. To use the words of Dua, J., in *Mangilal v. Krishnaji Rao Pawar* and another (A.I.R. 1971 Supreme Court, 1943) :

"a company registered under the Indian Companies Act, it is settled beyond dispute, is a separate entity distinct from its share-holders" (at page 1947).

Prima facie, the contract (Exhibit 1) is a contract entered into by the Company in course of its trade or business and cannot be held to be a contract entered into by respondent no. 1 in the course of his trade or business.

11. Shri S. C. Ghosh, appearing on behalf of the petitioner, however, contended that if there is a contract entered into by a company in the course of its trade or business, for the purposes of section 9A of the Act that contract must be regarded as a contract entered into by its share-holder or Director in the course of his trade or business, if the share-holder or Director holds a substantial number of shares and is managing the business of the company. The purpose of section 9A of the Act, he contends, using the words of Bose, J., in *Chaturbhuj Vithaldas Jasani v. Moreshwar Parashram* and others (A.I.R. 1954 Supreme Court, 236 at 243) "is to maintain the purity of legislature and to avoid a conflict between duty and interest." He further points out that "It is of the essence of the Law of Elections that candidates must be free to perform their duties without any personal motives being attributed to them" per *Hidayatullah, C.J.*, in *Konappa v. Vishwanath* (A.I.R. 1969 Supreme Court, 447 at 451). Shri Ghosh asserts that if persons who own considerable number of shares in a Company and thus are entitled to a substantial share of the profits which the Company may make out of the contract with the Government and are managing the affairs of the Company are held not to be disqualified for membership of the legislatures, there will be a conflict between interest and duty and motives would be attributed to them in the performance of their duties as members of the legislature. He, therefore, contends that to promote the object of the legislature and the principle of public policy underlying Section 9A of the Act, Section 9A must be so construed as to bring such persons within its disqualificatory net.

12. In support of this construction of Section 9A, Shri Ghosh further relied on the principle of interpretation that that interpretation which will make the provision ultra vires the Constitution should be preferred to the interpretation which will make the provision intra vires. He contends that unless Section 9A is held to be included within its ambit a candidate, who holds a substantial number of shares of a Company which has a subsisting contract of the requisite character with the appropriate Government, it would be ultra vires Article 14 of the Constitution. He referred to a decision of the Supreme Court in *Konappa v. Vishwanath* (A.I.R. 1969 Supreme Court, 447) which held that even a partner in a firm which has a subsisting contract of the character specified in section 9A of the Act with the Government is disqualified by section 9A of the Act and be urged that regard being had to the object to the provision, namely, the evidence of a conflict between duty and interest of members of legislature, there is no reasonable basis for disqualifying a partner who may have only a small interest in a firm which has a subsisting contract with the Government and not disqualifying a person who holds substantial number of shares and is managing the affairs of a company which has a like contract with the Government. The conflict between duty and interest is no less likely to exist in his case if he becomes a member of the legislature.

13. The argument that the provision of section 16(1)(ix) of the Orissa Municipal Act, 1950 was ultra vires Article 14 of the Constitution in so far as it disqualified a person from being a candidate at a Municipal election if he was employed as a paid legal practitioner against the municipality, but did not disqualify a person who had litigation with the Municipality was raised before the Supreme Court in *Sukhawant Ali v. State of Orissa* (A.I.R. 1955 Supreme Court, 166 at page 170). The Supreme Court speaking through Bhagwati, J., negated the argument in these words :—

"The simple answer to this contention is that legislation enacted for the achievement of a Particular object or purpose need not be all embracing. It is for the

legislature to determine what categories it would embrace within the scope of legislation and merely stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution." (at page 170 of the report).

On a Parity of reasoning the submission that if Section 9A disqualifies a Partner of a firm but does not disqualify a substantial share-holder or Director of a company when both the company and the firm had a contract of the requisite character with the Government, Section 9A would be ultra vires Article 14 must be rejected. It cannot be denied that there is a fundamental distinction between a shareholder or a Director of a company and a partner of a firm.

"Partnership is merely an association of persons for carrying on the business of Partnership and in Law the firm name is a compendious method of describing the Partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the share-holders." [per *Ghulam Hasan, J.* in *Mrs. Bacha v. Commissioner of Income Tax* (A.I.R. 1955 Supreme Court, 74 at 77)].

The principle that courts must lean in favour of the interpretation which makes the provision constitutional cannot, therefore, be pressed in aid of the construction put forward by Sri Ghosh.

14. Now can the object underlying Section 9A justify that construction. It is well settled that "a share-holder has no interest in the property of the company.....It is true that the share-holder have the sole determining voice in administering the affairs of the company.....The interest of the share-holder either individually or collectively does not amount to more than a right to participate in the profits of the company." *Mrs. Bacha v. Commissioner of Income Tax* (A.I.R. 1955 Supreme Court, 74 at Page 77). Consequently the business or trade carried on by the company is not the business or trade of its share-holders or Directors. As observed by *Gajendragadkar, C.J.* in *The Tata Engineering and Locomotive Company Ltd. and others v. The State of Bihar and others* (A.I.R. 1955 Supreme Court, 40) :

"Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated" (at page 48 of the report).

15. Therefore, leaving aside cases in which the company enters into the contract as an agent of the candidate and possibly the case where the company is a mere alter ego of the candidate, a contract entered into by a company in the course of its trade or business cannot be regarded as a contract entered into by the candidate in the course of his trade or business, though it may be that as he has a right to participate in the profits which the company may make out of the contract, he may have a beneficial interest in that contract can the expression "entered into by him in the course of his trade or business" be interpreted to include a contract in which he has a beneficial interest? In my opinion, it cannot be so interpreted. The expression "contract entered into by him" is plain and unambiguous. It means a contract to which he is a Party. The expression entered into by him is not capable of meaning a contract in which he has a beneficial interest even though he is not a Party thereto. A contract entered into by an independent legal person separate and independent from the candidate in the course of that person's trade or business can never be held to be a contract entered into by the candidate in the course of his trade or business even if he has a substantial beneficial interest therein. To so hold would amount to re-writing the section and would involve reading into it the words "in which he has a substantial beneficial interest."

16. Though it is undoubtedly a rule that the court should prefer that construction which suppresses the mischief and advances the remedy the construction which is more apt to suppress the mischief and advance the remedy is only permissible when the language used is capable of that construction. As pointed out by *Gajendragadkar, J.*, as he then

was, in *Kanai Lal Sur v. Paramnidhi Sadhukhan* (A.I.R. 1957 Supreme Court, 907) (at Pages 910 and 911) :

"The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defect or impair the policy of the Act whilst the other constructions is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct."

The words used, as I have already said, are not capable of meaning "or a contract in which he has a substantial beneficial interest. The interpretation contended per by Shri Ghosh can only be accepted if section 9A could be interpreted to index within its ambit a contract in which the person has a substantial interest. That as I have said, cannot be done without doing violence to the plain words of the statute. The interpretation put forward by Shri Ghosh cannot, therefore, be adopted on the ground that that interpretation "is more consistent with the alleged object and policy of the Act" or would suppress the mischief and advance the remedy which the legislature has been given.

17. If it were possible to regard the words used as ambiguous and not plain, we would be entitled and indeed bound in interpreting the words to consider the legislative history of the enactment of section 9A. Section 9A of the Act was introduced by the Representation of People (Amendment) Act, 1956 and it replaced the amended section 7(d) with an Explanation added to it. Section 7(d) as amended by the Representation of People (Amendment) Act, 1958 (Act No. 58 of 1958) ran thus :—

"7(d)—If there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

Prior to the 1958 amendment section 7(d) was as under:—

"7—A person shall be disqualified for being chosen as, and for being a Member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.

- (a) * * *
- (b) * * *
- (c) * * *

(d) If whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services by, the appropriate Government."

18. It would, thus appear that except for the Explanation the present section 9A is in pari material with section 7(d) as it existed after the Amending Act of 1958. Interpreting section 7(d) of the Act as substituted by the Amending Act of 1958, Sikri, J., as he then was, speaking for the majority of the Supreme Court in *Laliteshwar Prasad Sahi v. Bateshwar Prasad and others* (A.I.R. 1965 Supreme Court, 590) observed :

"Comparing the old section and the new section, there is no doubt that there has been a change in the wording. One change is quite clear and that is the contract now must have been entered in the course of his trade or business by a person with the appropriate Government. Previously it need not have

been a contract in the course of trade or business. The words were much wider and included any contract entered into for his benefit or on his own account or a contract in which he had any share or interest. To this extent the legislature has clearly narrowed the area of this disqualification." (at 583)

Section 9A being in pari material with section 7(d) as amended by Act of 1956, it is manifest that the scope of the disqualification under unamended section 7(d) of the Act has been narrowed down by the present section and contracts entered into for the benefit of a candidate or contract in which he has any interest, if they are not entered into by him, are no longer in the disqualificatory net. An examination of the legislative history, therefore, negatives the construction contended for on behalf of the petitioner.

19. Further, in interpreting the words used in section 9A we must remember that the right of a person to stand for an election is, to use the words of *Hidayatullah, C.J.*, in *Konappa v. Vishwanath* (A.I.R. 1969 Supreme Court, 447 at 451) "a valuable right" and section 9A restricts that right and as such it is a disabling provision and must be construed strictly. A Bench of this Court in *Shri Bateshwar Prasad v. Shri Laliteshwar Pd. Shahi* (1964 B.I.J.R., 1563) and a bench of Andhra Pradesh in *Dentu Bhaskararao v. C.V.K. Rao* (A.I.R. 1964 Andhra Pradesh, 77 at page 83) in view of the consideration held that section 7(d) of the Act, which section 9A has replaced had to be strictly construed and the meaning of the words used cannot be unduly widened by construction.

20. Further, the construction put forward on behalf of the petitioner stands negated by the decision of the Supreme Court in *Manjilal's case* (AIR 1971 Supreme Court, 1943) in which relying on the principle of separate entity of a company registered under the Indian Companies Act, it was held that the Chairman of the Board of Directors of the company while functioning as such cannot be said to be engaged in 'his trade or business' as contemplated by section 9A of the Act and, therefore, the contract by the Company could not be considered to be a contract entered into by the returned candidate in the course of his trade or business by reason merely of the fact that he was at the relevant time Chairman of the Board of Directors of the company. The Chairman of the Board of Directors of the Company certainly has a beneficial interest, and presumably substantial beneficial interest in a contract entered into by his company in the course of its trade or business.

21. Shri Ghosh also argued that if the legislature had intended that a candidate who was a share-holder or a Director of a company which had a contract with the Government of the character specified in Section 9A would not be disqualified, a specific provision protecting the candidate in such a case would have been made in section 9A itself. He drew my attention to the provisions of section 12 of the English Municipal Corporation Act, 1882 quoted in *Lapthorne v. Braithwaite* [1925 (1) King's Bench Division, 474 at 474]. Sub-section (1) of that section disqualified a person from being a Councillor if and while he "has directly or indirectly.....any share or interest in any contract, with.....the Council." And sub-section (2) of that section provided that a person should not be disqualified, or be deemed to have any share or interest in such a contract "by reason only or of his having any share or interest in.....any company.....under the Companies Act 1862." In that English Act, the words 'share or interest' in a contract were capable of including within the ambit a person who was a share-holder of a company which had entered into a contract with the Council and, therefore, the legislature deemed it necessary to insert a clause protecting a person who had share or interest in company which had entered into contract with the Council. As section 9A disqualified a person only if he has entered into the contract, and not even when he has only an interest or share in the contract of the requisite character, there was no necessity of enacting an excepting clause in favour of share-holders of a company which had entered into such a contract.

22. The decision in *Konappa v. Vishwanath* (A.I.R. 1969 Supreme Court, 447) relied on by Shri Ghosh does not, in

for by Shri Ghosh. The observation of Hidayatullah, C.J., in that case that "the law requires that a candidate should not have any interest in any contract with Government" on which Shri Ghosh particularly relied does not lay down that a candidate who has any interest in a contract entered into by some other person is within the mischief of section 9A. To understand the true import of the aforesaid observation we must have regard to the context in which it occurs. The observation occurs in the following passage :—

"Next it is argued that the section is applicable to a person whereas the contract was with a firm and therefore, the first respondent was not barred from standing for the election. In our opinion, the High Court has taken the right view of the matter. The law requires that a candidate should not have any interest in any contract with the Government and even a partner has an interest sufficient to attract the provision of Section 9A."

The observations were made while repelling the argument that a partner of a firm which has entered into a contract with the Government is not disqualified and the expression 'any interest' used by Hidayatullah, C.J. obviously, refers to the interest which a partner has in the contract entered into by his firm. The observations made in any decision must be read in the light of the facts of the case. If any interest in the contract attracts the disqualification the amendment to the original section 7(d) of the Act by the amending Act of 1958 would have been wholly ineffectual and would not have brought about a change in the law, which it clearly did as decided by the Supreme Court in Lalitshwar P.L. Sahi's case (sup.a) in which it was held that by the amendment the legislature had clearly narrowed the area of disqualification.

23. Shri Ghosh also relied on the decisions reported in *Nutton v. Wilson* [(1889(22) Queen's Bench Division, 744)] and in *Hunnins v. Williamson* [(1882-83 (11) Queen's Bench Division, 533)] but it is not necessary to consider those decisions as the statutory provisions dealt with in those cases were not in *Pari materia* with section 9A of the Act and the ambit of the disqualificatory provisions therein were much wider. The aforesaid construction contended for by Shri Ghosh must, therefore, be rejected.

24. Shri Ghosh next contended that a contract of the specified in section 9A entered into by the agent of the candidate must be regarded as a contract 'entered into by him' (the candidate) within the meaning of the expression as used in section 9A of the Act and that the aforesaid contract (Exhibit I) must be regarded as a contract entered into by the Company as the agent of the respondent and, therefore, a contract entered into by the respondent in the course of his trade or business. On the other hand, Shri Thakur Prasad, the learned Advocate for the respondent, besides denying that the contract was entered into by the Company as an agent of the respondent, urged that to attract the disqualification, the contract must be entered into by the candidate himself, it is not enough that it should be entered into on behalf of the candidate and, therefore, a contract entered into by an agent of the candidate cannot be regarded as a contract 'entered into by him' (the candidate) within the meaning of the expression as used in section 9A of the Act. He points out that the words used are 'entered into by him' and not 'entered into by him or on his behalf'. I am inclined to the view that a contract entered into by the agent of the candidate in the course of the trade or business of the candidate for the purposes of section 9A may be registered as a contract entered into by the candidate as this interpretation would promote and the contrary interpretation defeat the principle of public policy underlying section 9A. It is, however, not necessary to express a final opinion in the matter. Even if, for the purposes of section 9A, a contract entered into by the agent of a candidate is regarded as a contract entered into by a candidate himself, this contention of Shri Ghosh must fail because there is no evidence to justify the conclusion that in entering into the contract embodied in the agreement (Exhibit I) the Company acted as an agent of the respondent.

25. The respondent is one legal person and the Company is another legal person separate and distinct from the respondent. To constitute one person the agent of another legal

person, there must be a contract of agency. This is clear from the following observations of Tomlin, J., in *British Thomson Houston Co. Ltd. v. Sterling Accessories Ltd.* (8) [C 1924 (2) Chancery Division 33] quoted with approval by Cohen L.J., in *Ebbw Vale's case* [1951 (2) Kink's Bench Division, 366 at 370] : Tomlin, J., said :

"I do not think that any such 'inference'—that is, an inference of agency between the directors and the company—can be or ought to be drawn. It has been 'made plain by the House of Lords (that for the purpose of) establishing contractual liability it is not possible, even in the 'case of the so-called one-man companies, to go behind the legal 'corporate entity of the company and treat the creator and 'controller of the company is the real contractor merely because 'he is the creator and controller. If he is to be fixed with 'liability as principal, the agency of the company must be' established substantively and cannot be inferred from the 'holding of director's office and the control of the shares alone : 'see *Salomon v. Salomon and Co. Ltd.* (7). Any other conclusion 'would have nullified the purpose for which the creation of 'limited companies was authorised by the legislature."

Cohen L.J. in *Ebbw Vale's case* specifically laid down, the other Lord Justices in the Court of Appeal concurring, that "in the absence of an agency contract between the two companies, one cannot be said to be the agent of the other." The contract of agency may be express, it may even be established by the attending circumstances. But the contract of agency, must "be established substantively. There is no evidence, either direct or circumstantial, establishing the agency of the company substantively. The only fact established is that the respondent was for a long time the Managing Director of the Company and held considerable number of shares of the Company and that even after he ceased to be the Managing Director, he continued to be a Director of the Company. For the purposes of this case, I will disregard the plea of the respondent that at the time of the election, he was not a director of the company. But from these facts, to use the words of Tomlin, J., "The agency of the Company.....cannot be inferred." There is no other evidence either oral or documentary.

26. Shri Ghosh referred to the letters (Exhibit 6 series). Some of these letters relate to other contracts but some show that the respondent in his capacity as Managing Director, or, even a Director, took a leading part in negotiating the terms of the contract and in representing and same-guarding the interests of the company in regard to the contract. These letters establish that Shri Daya Nand Sahay, was acting on behalf of the company in regard to the contract in question. This circumstance might show that the respondent was an agent of the Company in regard to that matter. It cannot show that in regard to the contract, that is to say, in entering into the contract and executing the same, the Company acted as an agent of Shri Daya Nand Sahay. Shri Ghosh was repeatedly asked by me to point out any other fact established by the evidence supporting the plea that the Company was agent of the respondent. Shri Ghosh was unable to point out any evidence oral or documentary establishing that the company acted as an agent of Shri Daya Nand Sahay. The only oral evidence that he pointed out was the evidence of P.W. 3 to the effect that the fact that the office of the Company was located in the house of Shri Daya Nand Sahay. But that is no evidence of agency.

27. As a matter of fact, whatever material evidence is on the record suggests that the Company was the in regard to the contract and not the agent of any in The Income Tax Returns filed on behalf of the (for the Assessment Year 1975-76 to the Assessment 1978-79 have been brought on the record on behalf of the petitioner and they show that the Company was on the business of manufacture and supply of railway and showing the profits and loss of that business Profits and Loss Account annexed to its annual return. It is enough to refer only to the Income Tax (Exhibit 5) for the accounting year ending on 31. It appears from the annual return that the nature of business of the Company was manufacture of sleep

poles and that an advance of Rs. 39658 was obtained from the Railway Board, Government of India against orders. The accounts appended also show that substantial quantity of stone chips, cement and sand which are required in the manufacture of railway sleepers were purchased by the Company during that year. It also appears that on 31-12-74 the value of part of the fixed assets for the Sleepers Unit as viz. of the plants and machinery for the same unit was of Rs. 5,31,594 and odd. It further shows that 19312 sleeper units were manufactured during the year and 13920 sleepers unit of the new design and 477 units of the old designs were sold during the year. Of course, it is not clear from the accounts that the aforesaid related to the contract (Exhibit A) but it seems highly probable that the profit and loss in respect of that contract are included in the profit and loss account of the Company. This suggests that in entering into the contract, the Company acted as a principal and not as an agent of Shri Daya Nand Sahay.

28. In support of his contention regarding the Company being the agent of Shri Daya Nand Sahay, Shri Ghosh referred to the decision in *David Allen and Sons Billposting v. Brydalle* [1939 (4) All England Reports, 113]. But the question whether the company is the agent of another individual is a question of fact and has to be decided on the basis of the facts of each case. In that case, it was held on the facts of that case that the subsidiary Company was the agent of the parent company. This contention of Shri Ghosh must, therefore, fail.

29. Shri Ghosh next contended that the Company was the simulacrum or alter ego of the respondent and, therefore, the contract entered into by the Company should be regarded as a contract entered into by the respondent. He contended that for giving effect to the principle of public policy underlying section 9A of the Act, the court is entitled to disregard the corporate veil and entity and pay regard to the economic reality behind the legal facade. If the corporate veil of the Company is lifted, and the court looks to the economic realities behind the legal facade, he contends, it would appear that the Company is a more alter ego of the respondent. He relied on the principle that in exceptional cases the court is entitled to disregard the corporate entity of the corporation and look behind the legal facade. He contended that this was an exceptional case for if the courts were not entitled to disregard the corporate entity of the corporation for the purposes of the application of section 9A of the Act, the Principle of public policy underlying section 9A of the Act would be defeated.

30. On the other hand, Shri Thakur Prasad apart from contending that on the facts and circumstances of the case, the Company cannot be held to be the simulacrum or alter ego of the respondent, urged that for the purposes of applying section 9A of the Act, the court was not entitled to disregard the corporate entity and hold that a contract entered into by the Company was a contract entered into by the share-holder or the Director of the Company, who controlled it. He conceded that some exceptions have been engrafted on the rule that a corporation or a company has a juristic or legal entity separate from that of its Directors or share-holders. But he urged that this was not a case which fell within the recognised exceptions to the rule. He strongly relied upon the decision of the Supreme Court in *The Tata Engineering and Locomotive Co. Ltd.* and others v. *The State of Bihar and others* (A.I.R. 1965 Supreme Court 40). A large number of decisions and also passages from *Palmer's Company Law* have been referred to in connection with the principle lifting the corporate veil. It is, however, not necessary to consider the decisions and the Passages referred to because, in my opinion, if the corporate veil of the company is lifted, it is not established that the Company is the simulacrum or alter ego of the respondent Daya Nand Sahay and, therefore, this contention that the contract entered into by the Company should on this basis be regarded as a contract entered into by the respondent must also fail.

31. It appears from the memorandum of Association (Exhibit 3) of the Company that the subscribers thereto were the respondent Daya Nand Sahay and Daya Prakash, his wife's brother and each of them had agreed to take 2000 shares. It further appears from the memorandum of association that originally the authorised share capital of the Company was Rs. 5 lacs divided into 1 lac equity shares of

Rs. 5 each and the original Directors of the Company besides Daya Prakash and the respondent Daya Nand Sahay, were N. C. Bhatia, Radhe Shyam Sharma and Charanjit Singh. When we look at the evidence relating to number of shares of the Company held by different share-holders, it is evident that Daya Nand Sahay, even if the shares held by his wife, Children or even his brother and father are clubbed together with his shares, never had a controlling interest in the Company at any relevant time.

32. There is no evidence regarding the number of shares held by Shri Daya Nand Sahay and members of his family on 27-9-1972, the date when the agreement (Exhibit 1) was executed. We, however, know the number of shares held by different persons during the succeeding year viz., between 30-6-1973 and 29-6-1974. The annual return submitted by the Company to the Registrar of Companies for the period is on record as Exhibit 4 and it appears from Part V of the said return which contains the list of persons holding shares on the day of annual general meeting, namely 29-6-1974, and at any time during the period beginning from 30-6-1973, the date of the preceding annual general meeting that the total number of shares issued was 1 lac, Shri D. N. Sahay held 17000 shares, his wife, daughter and sons held another 17000 shares and out of remaining 66000 shares, 44000 were held by Shri Daya Prakash, his wife, his sons and his brother S. N. Gupta, while the remaining 22000 shares were held by Charanjit Singh, Mahanth Ramanand Bharti and Shamsher Jang Bahadur Singh. In March 1978 while the total number of shares issued was 1,50,000, when the election was held, the number of shares held by Shri Daya Nand Sahay along with the shares held by his wife, son, and daughters, including his married daughter, Smt. Bharti Shrivastava, niece Kumari Bharti Sahay was 48000 as detailed hereunder:—

Shri Daya Nand Sahay	17,000
Smt. Sushila Sahay (wife)	12,000
Kumari Bharti Sahay (daughter)	5,000
Kumari Suriti Sahay (daughter)	4,000
Sri Sanjay Sahay (son)	5,000
Sri V. N. Sahay (brother)	2,000
Sri G. N. Sahay (father)	3,000
	<hr/> 48,000 <hr/>

Out of the remaining 1,02,000 shares 64,600 were held by Shri Daya Prakash, his sons, his mother and his brother Shri S. N. Gupta, 37,000 being held by Sri Daya Prakash alone, and the balance 37,400 shares were held by Smt. Ruma Pradhan. Shri Charanjit Singh, the Mahanth Raman and Bharati Shamsher Jang Bahadur Singh, the number of shares held by Ramanand Bharati alone being 30,000. These facts appear from the annual return filed by the Company for the period from 30-6-1977 to 30-6-1978 [Exhibit 4(d)] taken along with the evidence as to the relationship in the deposition of the respondent, R.W. 2. It was suggested to the respondent (R.W. 2) that the shares held by his children and wife and his relation were in reality his shares but so far as the shares held by persons not belonging either to his family or to the family of Daya Prakash are concerned, there is not even a whisper in the evidence that the respondent had any interest in those shares. There is not even a suggestion that the other share-holders, who do not belong to the family of Daya Prakash or of the respondent including Mahanth Ramanand Bharati, were in any way related to the respondent or under his thumb. The suggestion that the shares held by his relations i.e. Daya Prakash and members of his family were purchased out of his money was denied by the respondent deposing as R.W. 2 and there is no evidence to the contrary. As the apparent must be, in the absence of evidence to the contrary, be presumed to be real state of affairs, and those shares must be held to belong to Daya Prakash and members of his family and not to the respondent. It is, therefore, crystal clear that Shri Daya Nand Sahay, even if regard is had to the shares held by his wife and members of his family, did not, at any relevant time, own even the majority of the shares. As a matter of fact, the respondent and his family were not even the largest share-holders, the shares held by Daya Prakash and the members of his family were at all relevant times much more than the shares held by the respondent and members of his family.

33. In these circumstances, it is idle to contend that the Company was a simulacrum or alter ego of the respondent Shri Daya Nand Sahay. In *Pegler v. Craven* [(1952) (2) Queen's Bench Division, 69] a shop occupied for its business by a Company in which the tenant of the premises in whose tenancy the shop was comprised and he and his wife held the majority of the shares and of which the tenant was at all times the Managing Director was not regarded by the Court of Appeal as a shop occupied by the tenant for the purposes of his business. The argument that the business of the Company was the business of the tenant as the Company was very nearly a mere alter ego of the tenant was rejected by Jenkins L.J. (at Pages 75 and 76 of the report). In these words :—

"By no stretch of imagination, so far as I can see, can the business carried on by the company on the premises here in question be regarded as the business of the tenant. It is the business of the company, and nobody else, and as I think I have already said, although Mr. Pegler is (with the aid of his wife's holding of ten shares) a majority shareholder, he is not by any means the sole shareholder. The business is the Company's and although he manages it for the company, and not on his own account."

Evershed M. R. agreed with Jenkins L.J. and observed (at page 79) :

"It may be that in some circumstances it could be said that a company in actual occupation was but the alter ego of the tenant. It is possible that such a conclusion might be arrived at in some cases, but it cannot, in my judgment be arrived at in this case for, as my brother pointed out, the company here cannot be said to be a mere alter ego of the applicant Pegler."

This decision, therefore, clearly shows that a Company in which a person along with his wife is a majority shareholder and of which that person was the Managing Director at all times, cannot be held to be the mere alter ego of that person inasmuch as he was by no means virtually the sole shareholder. If a company of which one person is at all times the Managing Director and holding a majority of shares cannot be regarded as an alter ego of that person, the Company cannot certainly be regarded as an alter ego of the respondent, who along with the members of his family was only a minority shareholder and was a Managing Director for a period but not for all time.

34. Shri Ghosh, however, contended that Shri Daya Nand Sahay was not only the Managing Director for most of the time but he was the head and soul of the Company, the other Directors or even the Chairman of the Board of Directors being mere dummies. In support of this contention he referred to the circumstance that two of the income tax returns, viz., (i) for the accounting year ending on 31-12-1975 (Exhibit 5/a), and (ii) for the accounting year ending on 31-12-1976 (Exhibit 5/b) submitted on behalf of the Company were signed by Shri Daya Nand Sahay, though he had ceased to be the Managing Director of the Company. But two of the Income Tax Returns filed by the Company, namely, Exhibits 5/a and 5/c are signed by Shri Daya Prakash and the respondent Shri Daya Nand Sahay when he had signed the returns (Exhibit 5(a) and 5(b)) was a Director of the Company, though he had ceased to be the Managing Director. This circumstance cannot show that all the other Directors were dummies and the respondent was all in all of the Company.

35. Strong reliance was placed by Shri Ghosh on the letters Exhibit 6 series, namely, Exhibits 6 to 6/k. Exhibit 6(d) is an order placed by the Railway Department of the Government of India regarding supply of railway sleepers and it shows that the order was accepted by the respondent on behalf of the Company in his capacity as the Managing Director of the Company. The remaining are letters which have been written by the respondent, one to the President of India and the others to the Railway authorities in connection with the contract in question or the earlier contract which the Company had for supply of sleepers to the Railway Board. It is not necessary to set out the contents of these letters except to state that these letters show that Shri Daya

Nand Sahay represented the Company in its dealings with the authorities of the Railway Board with regard to the contract of Railways sleepers during the period covered by the letters. The earliest letter is of the year 1956 and the last is dated 19-4-1977. I need only state further that these letters show that the respondent was the spokesman for the Company with regard to these contracts and that he took the leading part in obtaining and negotiating the contract in question, that he pressed for and obtained modifications on behalf of the Company of certain conditions of the contract and generally made efforts to secure advantageous terms for the Company and to remove the difficulties experienced by the Company in connection with the performance of its part of the contract by writing to the authorities. Most of these letters were written by the respondent in his capacity as Managing Director which officer, as already stated, he continued to hold till May 1974 but some of the letters were written by him even after he had ceased to be the Managing Director, Shri Daya Nand Sahay.

35. The fact that even as a mere Director he continued to represent the Company in its dealings with the Railway authorities regarding the contract does not warrant the inference that the other Director and share holders were his dummies and that the Company was his alter ego. It is not disputed that these letters establish that a Managing Director he was carrying on correspondence regarding the contract in question with the railway authorities and it seems probable that he continued to carry on the correspondence even after he ceased to be the Managing Director and was an ordinary Director because he was the Director most familiar with the subject of the correspondence. At the most, the correspondence (Exhibit 6 series) might establish that the respondent was the brain and most alive offices of the Company. It cannot establish that the Company was its alter ego. Any Director of the Company may by virtue of his experience, ability and expertise may play a dominant role in the affairs of the Company. But the Company cannot on that account, be regarded as his alter ego.

36. The oral evidence does not carry the matter any further. The petitioner, Shyam Lal Gupta, P.W. 1 merely asserted that the Company is a pocket company of the respondent. He admitted that his statement about the shareholders of the Company were based upon the records of the Company. His evidence that the respondent was the Chairman-Managing Director of the Company at the time is clearly incorrect. P.W. 2 merely asserted that Shri Daya Nand Sahay was all in all of the Company. Similarly, P.W. 3 also stated that the company was in his name and that Shri Daya Nand Sahay was 'Malik' of the concern. But these general assertions are virtually mere expressions of opinion of the witnesses cannot prove that the Company is the alter ego of the respondent. P.W. 2 deposed that once a cheque drawn on behalf of the Company was handed over to him by Daya Nand Sahay was associated with the management of the Company, a fact which is admitted. P.W. 3 further deposed that the office of the Company was situated in the house of Shri Daya Nand Sahay, a fact which has been controverted by the respondent, Daya Nand Sahay in his deposition as R.W. 2. Even if the evidence of P.W. 3 on this point is accepted this cannot establish that the Company is an alter ego of the respondent.

37. In support of his contention that as essentially the company was being managed by the respondent either in his capacity of Managing Director or Director, the Company must be regarded as an alter ego of the respondent, Shri Ghosh referred to the decision of the House of Lords in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* [1914-15] All England Reports, 280. But that case has no application. In that case which was a case relating to damage or loss of goods on board a ship, the action of the Director, who was designated as the person to whom the management of the ship was entrusted and who appeared to have been the active spirit in the Company which managed the ship was held to be the action of the company, that is to say for that transaction the Director was regarded as the alter ego of the company. The question was neither raised nor decided if the company was the alter ego of that Director. Reliance by Shri Ghosh in the decision of the Supreme Court in *Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras* (A.I.R. 1957), Supreme Court, 49 is also misplaced. In that case, the Supreme Court held

that in assessing the income of the assessee company, the profits made on certain sales and purchases ostensibly by the intermediary company were rightly included in the income of the assessee company. But that conclusion was arrived at not on the ground that the sale and purchases of the intermediary company and, therefore, the profits made therein must be regarded as the sales or purchases or profits of the assessee company as the intermediary company was the alter ego of the assessee company. That conclusion was arrived at on the ground that according to the findings of fact, which were held binding upon the Supreme Court, the sales and purchases on which the profits were alleged to have been made by the intermediary company were all sham transactions and the only real sales or purchases were those made by the assessee company itself. No question arose in that case as to whether the legal entity of the intermediary company could be disregarded. As observed by Venkataraman Iyer, J., speaking for the Supreme Court in that case, "on the finding that the sales were sham no question arises as to the constitution of status of the intermediary (at pages 68-69) of the report".

38. Faced with the position that there was virtually no evidence establishing that the company was the alter ego of the respondent, Shri Ghosh advance the argument that adverse inference should be drawn against the respondent for not having examined Sri Daya Prakash, the Chairman and Managing Director of the Company, who was his own brother-in-law and whom the petitioner could not possibly have examined, and for not producing the books of accounts of the Company. It would be, he urges, held that if that evidence had been adduced it would have established that business carried on in the name of the company was the business of the respondent and Daya Prakash and all other share-holders and directors were the creatures of the respondent. Though the books of the accounts of the Company have not been produced, the profit and loss accounts of the Company are incorporated in the income tax returns filed by the Government. All documents on whose production the petitioner insisted were called for by this Court. The documents of the Company could not be regarded as documents in possession or control of the respondent, who at the present, it is not dispute, who is neither the Managing Director or the Chairman of the Board of Directors of the Company. The returns (Exhibit 4 series) filed by the Company, in the absence of any further evidence as I have already shown negative the plea that the company was the alter ego of the respondent.

39. The onus was on the petitioner to show that the respondent was disqualified and, therefore, to prove that the contract embodied in the agreement (Exhibit 1) was a contract entered into by the respondent, as the company ostensible contracting party was the alter ego of the respondent. If the initial onus of establishing that the Company was the alter ego of the respondent had been discharged by the petitioner, the onus might have shifted on to the respondent to lead evidence to establish that the Company was not his alter ego. The petitioner did not adduce any evidence to discharge the initial onus which lay upon him of establishing that the company was the alter ego of the respondent. As a matter of fact, the documents produced by the petitioner Exhibits 4 and 4/d negated its plea that the company was its alter ego. In these circumstances no adverse inference can be drawn against the respondent for not examining Shri Daya Prakash or for not producing the books of accounts of the Company.

40. The decisions reported in A.I.R. 1969 Supreme Court, 692 or 40 Election Law Reports 390, or 43 Election Law Reports 316, in which adverse inference was drawn against the party for not examining witnesses who should have been produced are completely inapplicable because in those cases there was evidence against the party. The contention that the Company was the alter ego of the respondent must, therefore, be rejected.

41. I accordingly, hold that the contract (Exhibit 1) was not a contract entered into by the respondent, that and, therefore, the respondent was not disqualified by section 9A of the Act for election to the Council of States i.e. Rajya Sabha. Issue No. 3 must, therefore, be answered against the petitioner. It necessarily follows that issue No. 4 must also be

answered in the negative against the respondent as the sole ground on which it is urged that the nomination papers of the respondent should not have been accepted in his alleged disqualification under section 9A of the Act. Both these issues are, therefore, answered in the negative against the petitioner.

Issue No. 6

42. Upon the findings, it is clear that neither the election of the respondent cannot be set aside and consequently the petitioner is not entitled to be declared a duly elected member of the Rajya Sabha. Issue No. 5 also must, therefore, be answered in the negative.

43. In the result, the application fails and is dismissed with costs. Hearing fee Rs. 1000.

PATNA HIGH COURT

The 30th August, 1982.

N.A. N.A.F.R.

SHIVANUGRAH NARAIN, J.

[No. 82/BR-CS/2/78]

भारत निर्वाचन आयोग

प्रावधान

नई दिल्ली, 7 अक्टूबर, 1982

आ०आ० 131.—यतः निर्वाचन आयोग का समाधान हो गया है फरवरी, 78 में हुए असम विधान सभा के लिए सघारण निर्वाचन के लिए 42-पाटाछारकुछी निर्वाचन क्षेत्र से चुनने वाले उम्मीदवार श्री शैलेंद्र नाथ तालुकदार लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा अवैधित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं,

और यतः उक्त उम्मीदवार को एक कारण बताओ सूचना जारी की गई थी जो डाक प्राधिकारियों द्वारा प्रथितो के उपलब्ध न होने के कारण अधितरित वापस आ गई थी। और निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या व्यापारिक नहीं है,

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री शैलेंद्र नाथ तालुकदार संभव के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं० असम/वि०स०/42/78]

ELECTION COMMISSION OF INDIA.

ORDERS

New Delhi, the 7th October, 1982

O.N. 131.—Whereas the Election Commission is satisfied that Shri Sailendra Nath Talukdar, a contesting candidate for general election to the Assam Legislative Assembly held in February, 78 from 42-Patacharkuchi constituency has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951 and the rules made thereunder;

And whereas a show cause notice issued to him was received back undelivered from Postal Authorities stating that "Not available"; the Election Commission is further satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Sailendra Nath Talukdar to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. AS-LA/42/78]

का० भा० 132.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट पश्चिम बंगाल विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तत्सम बनाए गए नियमों द्वारा प्रवेक्षित समय के भीतर और रीति में उक्त सारणी के स्तम्भ (5) में यथा उपवर्णित रूप में अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने सम्बन्ध सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण प्रस्तुत नहीं किया है या उनके द्वारा किए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यावर्जित नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्रम सं०	निर्वाचन की विधिस्थिति	विधान सभा निर्वाचन क्षेत्र की क्रम सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निराहता का कारण
1	2	3	4	5
1.	पश्चिमी बंगाल विधान सभा के लिए	42-हरीशचन्द्रपुर ए०सी०	श्री रज्जक, ग्राम ब पो०आ० महेंद्रपुर, जिला मालदा, पश्चिमी बंगाल।	लेखा दाखिल नहीं किया।

[सं० 76/प० बंगाल-वि०सं०/82]

O.N. 132.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the West Bengal Legislative Assembly, as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even

after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of elections	S. No. and name of Assembly Constituency	Name of the contesting candidates	Reason for disqualification
1	2	3	4	5
1.	Gen. Election to the West Bengal Legislative Assembly, 1982.	42-Harischandrapur A.C.	Shri Razzak, V & P.O. Mahandrapur, Distt. Malda (West Bengal).	Account not lodged.

[No. 76/WB-LA/82]

अ.०अ. 133.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की मारणी के स्तम्भ (2) में यथा विनिर्दिष्ट आसाम विधान सभा के निर्वाचन के लिए जो स्तम्भ (5) में विनिर्दिष्ट निर्वाचन-क्षेत्र में हुआ है, स्तम्भ (4) में उनके नामों विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदुद्घातन बनाए गए नियमों द्वारा, अपेक्षित समय के भीतर और रीति में उक्त मारणी के स्तम्भ (5) में यथा उपरिष्ठित रूप में अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थी ने समय सूचना दिए जाने पर भी उक्त प्रक्रिया के लिए या तो कोई कारण प्रस्तुत नहीं किया है या उनके द्वारा दिए गए अभ्यावेदन पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की मारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को ससद् के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की गलाबधि के लिए निरहित घोषित करता है।

सारणी

क्रम सं०	निर्वाचन का विवरण	सभा निर्वाचन क्षेत्र की क्रम सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
1	2	3	4	5
1.	आसाम विधान सभा के लिए साधारण निर्वाचन 1978	49-खयगाव	श्री जनार्दन दिवान ग्राम कईमारी, पो० खयगाव (आसाम)।	लेखा दाखिल नहीं किया
2.	—वही—	51-जलुकबाड़ी	श्रीमती जोया मोरोल, ग्रंथ लखित नगर, राजगढ़, गोहाटी-7 (आसाम)	—वही—
3.	—वही—	52-दिसपुर	श्री विजो शंकर राय, कामरूप कालोनी, पांडु (आसाम)।	—वही—
4.	—वही—	54-गोहाटी पश्चिम	मो सोना हजारीका, फनामिल, गोहाटी-1 आसाम।	—वही—
5.	—वही—	55-हाजी	श्री मोहिबुल्ला अली, ग्राम बमपुर, पो० बमपुर, आसाम।	—वही—
6.	—वही—	57-रंगिया	श्री ताशुब इस्लाम, ग्राम उदियाना, पो० रंगिया (आसाम)।	—वही—
7.	—वही—	—वही—	श्री कल्प राम देका, ग्राम पश्चिम सितारा, बी रंगिया (आसाम)	—वही—
8.	—वही—	64-पानेरी	श्री गनेश देका, ग्राम व पो० कञ्चुबिल, जिला बारंग (आसाम)	—वही—
9.	—वही—	74-रंगापारा	श्री जसोबन्त सिंह वा.ई.नं० 2, पोरंगापारा, जिला बारंग (आसाम)	—वही—
10.	—वही—	83-बिगु	श्री मन्दुल शरीफ ग्राम व पो० ह.इबरगांव जिल. नीगोंग (आसाम)	—वही—
11.	—वही—	88-नीगोंग	श्री मूला सिंह ग्राम व पो० ड.इबरगांव ए०टी०रोड, वा.ई.नं० 5 जिला नीगोंग आसाम	—वही—
12.	—वही—	93-बोक. रब ट	श्री रत्नेश्वर लोहंग, बोनकैल गांव, पो बोनकैल (आसाम) नीलकान्त	—वही—
13.	—वही—	97-देरगाव (अ०ज.०)	श्री नीकान्त हजारीका गोनकपुखरी, गोलाधार (आसाम)	—वही—

1	2	3	4	5
14.	आसाम विज्ञान सभा के लिए साधारण निवीवन, 1978	94-तुलपठार	श्री मांगरा टेटे कोवनी गांव, पो० मरफलानी (आसाम)।	लेखा दाखिल नहीं किया।
15.	--वही--	100-टीटाबार	श्री दिनेश्वर ताशा गोरोमर दुलियागांव, जोरहाट-7 (आसाम)	--वही--
16.	--वही--	102-टेभोक	श्री फोरिक चूभया सेलेगरी, ग्रैंड पोस्तरिस्ताना (आसाम)	लेखा समय के अन्दर तथा रीति से दाखिल नहीं किया।
17.	--वही--	--वही--	श्री रोसेस्वर बोरा, पो० लाहिंग जिजा औरहाट (आसाम)	लेखा दाखिल नहीं किया
18.	--वही--	104-नाजिरा	श्री कुमुद गोहेन, चाली गोहेन गांव, पानामलीचाली (आसाम)	--वही--
19.	--वही--	113- छेमाजी (अ०ज०जा०)	श्री कमल चन्द्र मिसंग, ग्राम कारविक मिरि पाथेर, पोथेमाजी (आसाम)	लेखा रीति से दाखिल नहीं किया।
20.	--वही--	--वही--	श्री काकेश्वर कारबोंग ग्राम कारविक, पो मराधल (आसाम)	--वही--
21.	--वही--	114-जोनाई (अ०ज०जा०)	श्री बोरेंद्र बीले, पो जोनाई (आसाम)	--वही--
22.	--वही--	--वही--	श्री पदम पेंगु धिरवारी, पो० साहवेकुरी (आसाम)	लेखा रीति से दाखिल नहीं किया
23.	--वही--	--वही--	श्री थुगेंद्र नाथ पाटीर ग्राम मिस्सामारा, पो डेकापक (आसाम)	लेखा समय के अन्दर तथा रीति से दाखिल नहीं किया
24.	--वही--	118-तुलुआजन	श्री बॉरेन चुटिया मोरीबिल मजुली गांव, पो कथलगुड़ी (आसाम)	लेखा दाखिल नहीं किया
25.	--वही--	--वही--	श्री नारायण षाटोवर बोटदुर्ग, पंडुगरोजन (आसाम)	--वही--
26.	--वही--	120-नाहुरकटिय,	श्री कशा दत्ता, परबतपुर, पानामसप (आसाम)	--वही--
27.	--वही--	122-तिनसुकिया	श्री मानिक बास, परबतिया, पो० तिनसुकिया जिला डिब्रुगढ़ (आसाम)	--वही--
28.	--वही--	124-दिग्बोई	श्री निरंजन विस्वास, मकान नं० 3172-बी, सी०एम०एच० क्षेत्र, दिग्बोई, बपो दिग्बोई, जिला डिब्रुगढ़ (आसाम)	लेखा रीति से दाखिल नहीं किया
29.	--वही--	124-मरघेरिता	श्री प्रद्युत सिंह, गांव व थाना मरघेरिता, जिला डिब्रुगढ़ (आसाम)	लेखा दाखिल नहीं किया।
30.	--वही--	--वही--	श्री कर्ण ब्रह्मपुर थाप, माधवपुरी गांव, पो पेंगेरी, जिला डिब्रुगढ़ (आसाम)	लेखा रीति से दाखिल नहीं किया
31.	--वही--	126-रादिया	श्री शिधाजी राय, सरुपथार टाउन, पो मरुपथार जिला निबसागर, आसाम।	लेखा दाखिल नहीं किया।

[नं० 76/आसाम-वि०स०/78]

आदेश से,
सतीश चन्द्र जैन, धवर सचिव,

O.N. 133.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Assam Legislative Assembly as specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder ;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after consider-

ing the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

STATEMENT

Sl. No.	Particulars of Elections	Sl. No. and name of the Assembly Constituency	Name of the contesting candidates	Reason for disqualification
1	2	3	4	5
1.	General Election to the Assam Legislative Assembly, 1978.	49-Chaygaon	Shri Jnanendra Dewan, Vill. Kaimari, P.O. Chaygaon, (Assam).	Account not lodged
2.	-do-	51-Jalukari	Smt. Joya Moral, Vill. Lachit Nagar, Rajgarh, Gauhati-7(Assam).	-do-
3.	-do-	52-Dispur	Shri Bijon Sankar Roy, Kamakhya Colony Pandu (Assam).	-do-
4.	-do-	54-Gauhati West	Md. Sona Hazarika Fatasil Gauhati-9(Assam).	-do-
5.	-do-	55-Hajo	Shri Mohibulla Ali, Vill. Dampur, P.O. Dampur (Assam).	-do-
6.	-do-	57-Rangia	Shri Tajul Islam, Vill. Udiyana, P.O. Pangla (Assam).	-do-
7.	-do-	-do-	Shri Kalpa Ram Deka, Vill. Pashim Sitara P.O. Pangia (Assam).	-do-
8.	-do-	64-Panery	Shri Ganesh Deka, Vill & P.O. Kachubil' Distt. Darrang (Assam).	-do-
9.	-do-	74-Rangapara	Shri Jasowant Singh, Ward No. 2, P.O. Rangapara, Distt. Darrang (Assam)/	-do-
10.	-do-	83-Dhing	Shri Abdul Sharif, Vill. & P.O. Haibargaon, Distt. Nowgong (Assam).	-do-
11.	-do-	86-Nowgong	Shri Moola Singh, V & P.O. Haiborgaon, A.T. Road, Ward No. 5, Distt. Nowgong (Assam).	-do-
12.	-do-	93-Bokakhat	Shri Ratneswar Loing, Bonkual Gaon, P.O. Bonkaul (Assam)	-do-
13.	-do-	97-Dergaon (SC)	Shri Nila Kanta Hazarika, Gonokpukhuri, Golaghat (Assam)	-do-
14.	-do-	94-Sarupathar	Shri Mangra Tete, Konwani Gaon P.O. Murphulani (Assam).	-do-

1	2	3	4	5
15. Gen. Election to the Assam Leg. Assembly, 1978.		100-Titabar	Shri Dineswar Tasha, Goromur Duliagaon, Jorhat-7. (Assam).	Account not lodged
16.	-do-	102-Teok	Shri Photick Ch. Bhuyan, Bheleuguri Grant, P.O. Khatisona (Assam).	Account not lodged with- in the time and in the manner.
17.	-do-	-do- [Shri Rosewar Bora, P.O. Lahing, Distt. Jorhat (Assam).	Account not lodged.
18.	-do-	104-Nazira	Shri Kumud Gohain, Charali Gohain Gaon, P.O. Namticharali, (Assam).	-do-
19.	-do-	113-Dhemaji (ST)	Shri Kumal Chandra Misong, Vill. Karichuk Miri Pather, P.O. Dhemaji (Assam).	Account not lodged the manner.
20.	-do-	-do-	Shri Kakeswar Ka'dong, Vill. Karichuk, P.O. A adhal (Assam).	-do-
21.	-do-	114-Jonai (ST)	Shri Birendra Doely, Bahir Jonai, P.O. Jonai (Assam)	-do-
22.	-do-	-do-	Shri Padma Pogu, Dikhari, P.O. Laimekuri (Assam).	-do-
23.	-do-	-do-	Shri Thugendra Nath Patir, Vill. Missamara, P.O. Deikapam (Assam)	Account not lodged in time & in manner.
24.	-do-	118-Duliajan	Shri Biren Chutia, Merbil Majuli Gaon, P.O. Kathalguri (Assam).	Account not lodged.
25.	-do-	-do-	Shri Narayan Ghatowar, Bordubi, P.O. Hoogrija (Assam).	-do-
26.	-do-	102-Naharkatia	Shri Kusha Dutta, Parbatpur, P.O. Namrup (Assam).	-do-
27.	-do-	122-Tinsukia	Shri Manik Das, Parbatia, P.O. Tinsukia, Distt. Dibrugarh (Assam).	-do-
28.	-do-	123-Digboi	Shri Niranjan Biswas, Gr. No. 3172-B, C M.H. Area, Digboi, P.O. Digboi, Distt. Dibrugarh (Assam).	Account not lodged in manner.
29.	-do-	124-Margherita	Shri Pradyut Singh, P.O. & P.S. Margherita, Distt. Dibrugarh (Assam)	Account not lodged in manner
30.	-do-	-do-	Shri Karn Bahadur Thapa, Madhabpur Gaon, P.O. Pengori, Distt. Dibrugarh (Assam).	Account not lodged in manner.
31.	-do-	126-Sadiya	Shri Sibaji Rai, Saruptabar Town, P.O. Saruptahar, Distt. Sibsagar (Assam).	Account not lodged

[No. 76/AS-LA/78]

By Order,

S. C. JAIN, Under Secy.

नई दिल्ली, 30 सितम्बर, 1982

New Delhi, the 30th September, 1982

आ० आ० 134.—लोक प्रतिनिधित्व अधिनियम 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग, उड़ीसा सरकार के परामर्श से श्री एस० एम० पटनायक, आई० ए० एस० के स्थान पर श्री पी० के पटनायक, आई० ए० एम० सरकार के आयुक्त एवं सचिव, राजस्व और उत्पाद शुल्क विभाग, उड़ीसा सरकार को उनके कार्य भार सम्भालने की तात्पर्य से अगले आदेशों तक उड़ीसा राज्य के मुख्य निर्वाचन अधिकारी के रूप में सामनिर्देशित करता है।

[सं० 154/उड़ीसा/82]

आदेश से
के० गणेशन, सचिव

O.N. 134.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Orissa hereby nominates Shri P. K. Patnaik, I.A.S. Commissioner-cum-Secretary to Government, Revenue and Excise Department, Government of Orissa, as the Chief Electoral Officer for the State of Orissa with effect from the date he takes over charge and until further orders vice Shri S. M. Patnaik, I.A.S.

[No. 154/OR/82]

By Order,
K. GANESAN, Secy.